

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

WALTER L. MORRIS

PLAINTIFF

V.

CAUSE NO. 3:09-CV-00504-CWR-LRA

**ZIMMER HOLDINGS D/B/A
ZIMMER, US., INC., AND
JOHN DOES I-V**

DEFENDANT

ORDER GRANTING SUMMARY JUDGMENT

The above-styled matter is before the Court on the Defendant's Motion for Summary Judgment [Docket No. 29]. The Court has reviewed the parties' briefs regarding that request and the exhibits supporting their arguments and, after due consideration, has concluded that the motion must be granted.

This is a products-liability case. On August 10, 2010, Magistrate Judge Anderson revised the existing Scheduling Order to set a deadline of November 15, 2010, for Plaintiff Walter Morris to designate his experts. In turn, the Defendant was ordered to tender its designations no later than December 15, 2010. The Defense complied with the instruction, but Morris never did.

Under Mississippi law, evidence of a design defect must be supported by expert testimony, and the failure to designate an expert who is prepared to offer such evidence demonstrates the lack of a *prima facie* case. *Hammond v. Coleman Co., Inc.*, 61 F. Supp. 2d 533, 542 (S.D. Miss. 1999), *aff'd*, 209 F.3d 718 (5th Cir. 2000); *Childs v. Gen. Motors Corp.*, 73 F. Supp. 2d 669, 671 (N.D. Miss. 1999). The expert testimony which has been provided is that of the defendant's expert witness, and that testimony remains un rebutted. This Court is obligated to adhere to this substantive matter of state law. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

It is uncontested that Morris has not designated any expert to testify in support of his

case. Therefore, out of fidelity to Mississippi law, this Court has no choice but to grant summary judgment in favor of the Defendant.

SO ORDERED this Twenty-Ninth day of April 2011.

/s/ Carlton W. Reeves
Hon. Carlton W. Reeves
United States District Court Judge